

FEDERAL MARITIME COMMISSION

46 CFR PART 588

[DOCKET NO. 87-25]

ACTIONS TO ADJUST OR MEET CONDITIONS  
UNFAVORABLE TO SHIPPING IN THE  
UNITED STATES/TAIWAN TRADE

AGENCY: Federal Maritime Commission.

ACTION: Notice of Discontinuance.

SUMMARY: The Federal Maritime Commission discontinues this proceeding and withdraws the proposed rule. This action makes unnecessary the filing of any further comments on the Proposed Rule.

DATE: This action is effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

The Commission initiated this proceeding pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876 ("Section 19"), by a Notice of Proposed Rulemaking ("Proposed Rule") published in the Federal Register on December 8, 1987 (52 FR 46505) based on the apparent existence of conditions unfavorable to shipping in the United States/Taiwan trade ("Trade"). The Proposed Rule addressed practices which appeared to unreasonably restrict U.S.-flag carriers from competing in the Trade on the same

basis as Taiwan-flag carriers with respect to the ownership and operation of dockside equipment and facilities, and the ability of U.S.-flag carriers to obtain container terminal licenses.<sup>1</sup> The remedies proposed as alternative sanctions were suspension of the tariffs of Taiwan-flag carriers serving U.S. ports, and suspension of transshipment and terminal agreements at U.S. ports to which Taiwan-flag carriers are parties. Comments on the Proposed Rule are to be submitted by March 7, 1988.<sup>2</sup>

On February 1, 1988, the Commission received a comment (dated January 21, 1988) to the Proposed Rule from the Taiwan Coordination Council for North American Affairs ("CCNAA") which incorporated a request (hereinafter referred

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<sup>1</sup> The information which formed the factual basis for the Proposed Rule had been obtained through an order pursuant to section 15 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 814. See Inquiry Into Laws, Regulations and Policies of Taiwan Affecting Shipping in the United States/Taiwan Trade, issued April 15, 1987 ("Section 15 Order"). The Section 15 Order sought information from non-Taiwan-flag ocean common carriers serving the Trade. Although a number of other areas were explored in the Section 15 Order, ownership of dockside equipment and container terminal licensing were the two issues of paramount concern identified in the responses to the Section 15 Order.

<sup>2</sup> The original deadline for submission of comments was January 7, 1988. Requests to extend the time for comments were received from Orient Overseas Container Line ("OOCL") and Yang Ming Marine Transport Corporation ("Yang Ming"). American President Lines ("APL") and Sea-Land Service, Inc. ("Sea-Land") informally advised that they did not oppose a reasonable extension of time. The Department of State ("DOS") and Department of Transportation ("DOT") informally indicated that they supported the requested extension. On January 6, 1988, the Commission extended the comment period to March 7, 1988.

to as "the Petition") that the Commission discontinue this proceeding.<sup>3</sup> Letters in support of CCNAA's request were received from Taiwan-flag carriers Evergreen Marine Corporation ("Evergreen") (letter dated February 17, 1988) and OOCL (letter dated February 16, 1988).<sup>4</sup>

U.S.-flag interests have also filed replies to CCNAA's Petition. APL's reply, received February 16, 1988, supports discontinuance of this proceeding but requests that the Commission gather additional information concerning the Trade under section 15 of the 1984 Act. Sea-Land's reply, received February 22, 1988, also supports termination of this proceeding and continuation of the Commission's section 15 inquiry. The U.S.-Flag Far East Discussion Agreement ("Agreement 10050") likewise supports termination of this proceeding and continued monitoring of the Trade.<sup>5</sup>

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<sup>3</sup> CCNAA filed its request pursuant to 46 CFR 585.13 which provides in relevant part that:

The Commission may, on its own motion or upon petition postpone, discontinue, or suspend any and all actions taken by it under the provisions of this part.

CCNAA's request therefore is being treated as a petition to discontinue the proceeding and, in the interest of time and orderly procedure, is now being separately considered.

<sup>4</sup> Yang Ming, also a Taiwan-flag carrier, filed a letter on February 4, 1988 which, while not responding directly to the Petition, did request that this proceeding be "closed."

<sup>5</sup> The United Shipowners of America ("USA") submitted a letter on February 16, 1988 which supported the position of U.S.-flag carriers and noted "changes in factual circumstances in Taiwan" but did not address the question of whether this proceeding should be discontinued.

SUMMARY OF COMMENTS ADDRESSING  
THE PETITION FOR DISCONTINUANCE

Although the comment period has not yet expired, the Commission has received a number of comments from shippers, ports and other interested persons on the Proposed Rule, some of which also request that the Proposed Rule be withdrawn. These comments, some of which were filed prior to the CCNAA Petition, however, do not directly address the question raised by that Petition which is before the Commission at this time and will not be further discussed here. The following is a summary of the Petition, the replies to the Petition from Taiwan-flag and U.S.-flag carriers, and relevant communications from the U.S. Government agencies.

The Petition

CCNAA asserts that the two issues raised in this proceeding have been resolved and therefore requests that this proceeding be withdrawn. With regard to the question of ownership and operation of dockside equipment, CCNAA believes that new contracts between Kaohsiung Harbor Bureau ("KHB") and U.S.-flag carriers, expected to be signed by January 31, 1988, should resolve this matter. With regard to the question of container terminal licenses, CCNAA alleges that recent revisions of regulations by the Ministry of Communications greatly liberalize the requirements for obtaining a dockside container freight station license. CCNAA therefore urges that "the FMC withdraw any and all

action in . . . [this] matter, on the basis that the issues targeted for this action have already been resolved . . ."

Replies to the Petition

1. Evergreen. Evergreen urges that this proceeding be terminated. Evergreen's Reply references its comment of January 5, 1988 to the Proposed Rule which notes the progress recently made citing the recent revision of the container terminal regulations and the then pending contract negotiations between KHB and U.S.-flag carriers.

2. OOCL. OOCL supports the Petition and urges the Commission to discontinue this proceeding based on the new contracts and the revised regulations.

3. APL. APL believes that the two issues raised in this rulemaking have been substantially resolved and that it would be appropriate to terminate this proceeding. With regard to the issue of ownership of dockside facilities and equipment, APL reports that it has entered into long-term agreements with KHB which provide that APL may import, own, operate and re-export certain container handling equipment subject to certain terms and conditions. APL believes that it is now able to operate on "commercially reasonable terms." With regard to the question of operation of container terminals, APL notes that it is satisfied that the revision of the container terminal licensing regulations has removed ". . . the primary regulatory obstacle to the establishment by APL of a container terminal in Taiwan . . . ." Finally, although APL believes that this

proceeding may be discontinued, it requests that the Commission permit interested persons to supplement their responses to the Section 15 Order to address other possible issues in the Trade.

4. Sea-Land. Sea-Land states that "[t]here has been significant progress made toward eliminating unfavorable conditions existing in the U.S./Taiwan trades, particularly with respect to the ownership and operation of dockside equipment and facilities, and with respect to the licensing of container terminal operations." Sea-Land cites a new agreement it has concluded with KHB. Sea-Land concludes that termination of this proceeding would be appropriate, but asks that "the Section 15 Inquiry be continued."

5. U.S.-Flag Far East Discussion Agreement.

Agreement No. 10050, two of whose members are APL and Sea-Land, also supports discontinuance of this proceeding at this time. Agreement No. 10050 notes that ". . . significant progress . . . has been made toward alleviating the particular trade conditions addressed in this proceeding . . . ." Agreement No. 10050 cites recent new contracts between U.S.-flag carriers and KHB and the revision of the terminal licensing regulations. Agreement No. 10050 also urges the Commission to continue to closely monitor conditions in the Trade.

U.S. Government Communications

By letter to the Commission, dated February 22, 1988, submitted on behalf of the Departments of Transportation and

State, the Maritime Administrator forwarded to the Commission an exchange of correspondence between CCNAA (letter dated January 6, 1988) and the American Institute in Taiwan ("AIT") (letter dated January 13, 1988). The February 22 letter also refers to an earlier letter from the Maritime Administrator, dated January 15, 1988, which summarized recent developments in the Trade as they relate to the issues in this proceeding. The sum and substance of these various communications is to confirm the fact that significant progress has been made to alleviate the burdens on the operations of U.S.-flag carriers in Taiwan which are the subject of this proceeding.<sup>6</sup>

#### DISCUSSION

Although the comment period in this proceeding has not expired, the Commission now has before it the CCNAA request, filed pursuant to 46 CFR 585.13, that the Commission discontinue this proceeding. The Petition is supported by Taiwan-flag carriers that would be affected by the sanctions in the Proposed Rule. In addition, the U.S.-flag carriers, whose operations in Taiwan were the subject of this rulemaking, also support discontinuance of this proceeding. Finally, the U.S. Government has submitted letters to the

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<sup>6</sup> The February 22, 1988 letter from the Maritime Administrator does not address CCNAA's Petition or take a position as to whether this proceeding should be discontinued. The January 13, 1988 AIT letter to CCNAA does express the hope that the terminal licensing process will not be burdensome for U.S. carriers.

Commission which confirm the two most significant recent developments in this Trade. The Commission therefore believes that it is appropriate to consider and act on the Petition at this time.

The positions taken by the Taiwan and U.S.-flag interests disagree over the issuance of the Proposed Rule. With regard to those factual developments that have a bearing on the two issues in this proceeding, however, all affected parties appear to be in fundamental accord. The first issue addressed in this rulemaking concerned restrictions placed on U.S.-flag carriers with regard to the ownership and operation of dockside equipment and facilities. The comments filed indicate that both APL and Sea-Land have recently concluded contracts with KHB which resolve this problem. It appears that these restrictions have been substantially lifted and that U.S.-flag carriers can operate on terms which they believe are commercially reasonable.

The second issue concerned the Taiwan regulatory scheme which unreasonably hampered the ability of U.S.-flag carriers to obtain licenses to operate container terminals. The comments represent that the chief regulatory impediments have now been removed. The Commission is aware of the fact that, as of this date, the process of licensing U.S.-flag carriers to operate port container terminals is not yet complete. We note especially the concern expressed in AIT's letter to CCNAA, which was forwarded to the Commission by



the Maritime Administrator, that the licensing process not be expensive, burdensome, or time-consuming for U.S. carriers. While this matter is not totally concluded, it does not appear that the current regulatory regime will pose any unreasonable impediments to the ability of U.S.-flag carriers to operate container terminal facilities. We presently expect that the remaining administrative matters will be completed satisfactorily.

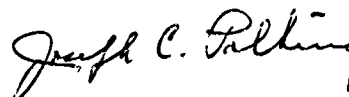
Based on these developments, the Commission has concluded that the objectives of this rulemaking have been achieved and that no further regulatory purpose would be served by continuing this proceeding. The Commission therefore shall grant the Petition of CCNAA and shall discontinue this proceeding and withdraw the Proposed Rule.

This action is taken without prejudice to the Commission instituting a new proceeding under section 19 should conditions in the Trade warrant it. Such an action could occur if the expected progress with respect to container terminal licensing does not materialize. Moreover, we note that the U.S.-flag carriers in their comments urge that the Commission continue to closely monitor the Trade and the progress of governmental and commercial efforts to eliminate any conditions unfavorable to shipping in that Trade. To that end, the Commission is expressly requested to continue its section 15 inquiry to address other issues raised in that inquiry and to update information on the Trade situation generally.

It is not necessary at this time to take any action on the request of the U.S.-flag carriers that the Commission conduct a further inquiry into conditions in the Trade through the section 15 process. The Commission, however, will continue to closely monitor the Trade and will take further appropriate action under section 15 or under Section 19 as Trade conditions may warrant. The Commission remains committed to take action (including imposition of sanctions on foreign carriers) where it considers that step necessary to ensure fair and reasonable treatment of U.S.-flag carriers or otherwise to correct unfavorable shipping conditions in U.S. foreign commerce.

THEREFORE, IT IS ORDERED, That the Petition of the Coordination Council for North American Affairs is granted; and

IT IS FURTHER ORDERED, That the Proposed Rule is withdrawn and this proceeding is discontinued.  
By the Commission.

  
Joseph C. Polking  
Secretary